IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Hardayal Singh & Anr. v. Divl.Commissioner & Ors.

S.B.CIVIL WRIT PETITION NO.4935/1990
under Articles 226 and 227 of the Constitution of India.

Date of Order : 11th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Agarwal, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.
Mr. Sudhir Sharma, for the respondents.

BY THE COURT :

Under Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Act of 1954") land measuring 25 bighas was allotted to one Shri Aaturam on the basis of strength of family, consisting five persons at that time including Aaturam himself, his wife Smt.Bholi, Deva, Kapoor and Heera Singh, all sons of Shri Aaturam. One son Shri Jagir Singh was born after allotment of land under the Act of 1954. Shri Aaturam, after allotment of land, paid the entire consideration to

rehabilitation department in installments. No formality left by Shri Aaturam necessary under the Act of 1954 and the Rules framed thereunder required for grant of sanad for transfer of agricultural land under the Act of 1954. The possession of the land was also given to Shri Aaturam. However, in spite of it the sanad as required under Rule 68 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as "the Rules of 1955") was not issued by the competent authority.

One son of Shri Aaturam namely Kapoor Singh having 2/9th part of share in the aforesaid land sold his part to the petitioners under a sale deed dated 25.6.1971. The sale deed was executed by power of attorney of Shri Kapoor Singh. In the sale deed it was specifically mentioned that mutual partition of the land had taken place on 1.4.1965 and as such Kapoor Singh was entitled to sale his part of the land.

Smt.Bholi widow of Shri Aaturam, Devaram and Jagir Singh, both sons of Shri Aaturam filed an application before the District Rehabilitation Officer-cum-Managing Officer, Sriganganagar to dispossess the petitioner from the land which was sold to him by Kapoor Suingh and also to hand over possession of the land to them. Aforesaid persons (respondents No.5 to 7) contended in the application that no partition of the land took place, therefore,

Kapoor Singh was having no authority to transfer any part of the property in dispute. It was also averred that no sanad was issued by the competent authority, therefore, the land could not be sold by Kapoor Singh or by any of the persons of the family of Shri Aaturam. The application preferred by the respondents No.5 to 7 was decided by Rehabilitation Officer-cum-Managing Officer, Sriganganagar by an order dated 29.12.1986. The Rehabilitation Officer-cum-Managing Officer by aforesaid order held that as the sanad pertaining to the land allotted to Shri Aaturam was not issued, therefore, the transfer made by Kapoor Singh was illegal being in contravention of the provisions of the Act of 1954 and the Rules of 1955. The Rehabilitation Officer-cum-Managing Officer on basis of finding above ordered to resume the land in favour of Government of India under the provisions of Section 19(2) of the Act of 1954 read with Rule 102 of the Rules of 1955.

The petitioners as well as the respondents No.5 to 7 being aggrieved by the order dated 29.12.1986 preferred separate appeals before the Additional Collector-cum-Authorised Settlement Commissioner, Sriganganagar. The Authorised Settlement Commissioner by judgment dated 13.2.1987 rejected the appeal preferred by the petitioners on the count that Kapoor Singh was no authority to transfer the land as no sanad under Rule 68 of the Rules of 1955 was issued

by the competent authority in favour of Shri Aaturam. The Authorised Settlement Commissioner while deciding appeal in quite unambiguous terms accepted the position that the entire cost of the land was already deposited by Shri Aaturam and possession of the land was already given to him. It was also accepted that Smt.Bholi, Devaram, Kapoor Singh and Jagir Singh were declared as heirs and legal representatives of Shri Aaturam.

The Authorised Settlement Commissioner by the same judgment dated 13.2.1987 also rejected the appeal preferred by the respondents No.5 to 7 on the count that the land was transferred by Kapoor Singh on basis of a partition deed through his power of attorney and by executing a sale deed and no challenge to those documents could be given under the Act of 1954 and challenge to those documents could be made by the appellants (respondents No.5 to 7) before the competent civil court and not before the authorities under the Act of 1954.

Being aggrieved by the judgment dated 13.2.1987 the petitioners preferred a revision petition before the Settlement Commissioner, Sriganganagar. A revision petition was also filed challenging the judgment dated 13.2.1987 by Devaram (respondent No.5). The revision petitions filed by the petitioners as well as by Shri Devaram (respondent

No.5) were rejected by Chief Settlement Commissioner, Sriganganagar by order dated 4.9.1989.

A challenge to the the order dated 4.9.1989 was given by the petitioners by way of filing a petition before Divisional Commissioner, Jaipur under Section 33 of the Act of 1954 and the same was dismissed by an order dated 28.8.1990. Hence the petitioners preferred this writ petition under Articles 226 and 227 of the Constitution of India challenging the order dated 28.8.1990 passed by Divisional Commissioner, Jaipur, the order dated 29.12.1986 passed by District Rehabilitation Officer-cum-Managing Officer and all the orders affirming the order dated 29.12.1986.

The challenge to the orders impugned is given by the petitioners mainly on two counts viz.(1) the courts below erred while cancelling allotment of land made in favour of Shri Aaturam as the issuance of sanad under Rule 68 of the Rules of 1955 is only a ministerial act and a natural consequence after depositing the entire consideration of the land allotted; and (2)the Settlement Officer-cum-Managing Officer, Sriganganagar erred while making an order to resume the land under Section 19(2) of the Act of 1954 read with Rule 102 of the Rules of 1955 without holding requisite proceedings in accordance with the provisions above.

A reply to the writ petition has been filed on behalf of the respondents No.1 to 4 stating therein that the Settlement Officer-cum-Managing Officer, Sriganganagar rightly ordered to resume the land as no sanad as required under Rule 68 of the Rules of 1955 was issued in favour of Shri Aaturam or his heirs and, therefore, the transfer of land by Kapoor Singh was illegal being without authority of law. The respondents have admitted in their reply that no amount was due against cost of the land allotted to Shri Aaturam.

Heard learned counsel for the parties.

The first contention of the counsel for the petitioners is that though the sanad after transfer of land in favour of Shri Aaturam was not issued but it does not make the transfer illegal. It also not contravenes any of the provisions of the act of 1954 and the Rules of 1955. According to the counsel for the petitioners the non-issuance of sanad even after deposition of entire cost of the land was an inaction on part of the respondents No.1 to 4 and for that transfer made by Kapoor Singh could not be held illegal. It is further contended that in fact after deposition of entire amount of consideration the issuance of sanad is nothing but a ministerial act and is a natural consequence of deposition of consideration amount. Therefore, further transfer of

the land by the allottee before issuance of sanad cannot be held illegal, at the most it may be an irregularity.

Under Chapter VIIIth of the Rules of 1955 various circumstances have been prescribed with regard to compensation in respect of verified claim for agricultural lands situated in rural areas. It also prescribes manner of allotment of land and the manner to give possession of allotted agricultural land. The issuance of sanad is a consequence of transfer of land made in favour of any person under the Rules of 1955. From reading of Rule 68 of the Rules of 1955 it is clear that where any agricultural land is transferred to any person then the transferee shall be granted a sanad in the form specified in Appendix XV. This clearly shows that the sanad is required to be given after transfer of land under the Rules of 1955 to any person. There is no other option with the authorities under the Rules of 1955 but to issue sanad after completing transfer of the land in favour of any person. In the present case Shri Aaturam deposited the entire amount in installments to the competent authorities and, therefore, the transfer of the land was completed. It is pertinent to note that possession of the land was also given to Shri Aaturam. After deposition of entire amount and after receiving possession of the land by Shri Aaturam it was obligatory for allotting authorities to issue sanad in

accordance with Rule 68 of the Rules of 1955 to Shri Aaturam. Non issuance of such sanad by allotting authorities does not make the transfer illegal. It was an irregularity on part of the allotting authorities and for this purpose Shri Aaturam or other members of his family cannot be held responsible and be punished by resuming the land under Section 19 of the Act of 1954 read with Rule 102 of the Rules of 1955. The Settlement Officer-cum-Managing Officer, Sriganganagar by its order dated 29.12.1986 manifestly erred while making order to resume the land on the count that sanad as required under Rule 68 of the Rules of 1955 was not issued by the allotting authorities in favour of Shri Aaturam, therefore, no transfer could have been made by Kapoor Singh or by any other member of his family.

It is also contended by the counsel for the petitioners that before making an order for resumption of the land in question no proceedings as required under Section 19 of the Act of 1954 read with Rule 102 of the Rules of 1955 were conducted by the Managing Officer.

In the instant case the order dated 29.12.1986 was passed by Settlement Officer-cum-Managing Officer, Sriganganagar on an application preferred by the respondents No.5 to 7 to dispossess the petitioners from the land in dispute and to hand

over possession of the same land to them. In fact no proceedings were ever initiated by the Managing Officer to cancel allotment of the land acquired under the Act of 1954 by Shri Aaturam and his family members. There was no occasion for the Managing Officer to pass an order for resumption of the land without initiating proceedings under Section 19 of the Act of 1954 read with Rule 102 of the Rules of 1955. A land cannot be resumed by the Government without cancelling the allotment of land or lease as the case may be.

In the present case it is a position admitted that the order dated 29.12.1986 was passed on an application preferred by the respondents No.5 to 7 and that was relating to restoring possession of the land to them and to dispossess the petitioners. No proceeding was ever initiated under Section 19 of the Act of 1954 and Rule 102 of the Rules of 1955 before making an order to resume the land. As such no opportunity of hearing was given as required under Section 19 of the Act of 1954 and under the Rules of 1955 for cancellation of allotment. The order made by the Settlement Officer-cum-Managing Officer to resume the land, therefore, is in flagrant violation of the provisions of Section 19 of the Act of 1954 and Rule 102 of the Rules of 1955. The authorities affirming the order dated 29.12.1986 also failed to appreciate this position of law.

In view of whatever discussed above this writ petition is allowed. Consequentially the order dated 29.12.1986 passed by the District Settlement Officer, Sriganganagar is declared illegal, therefore, the same is hereby quashed. All the orders impugned affirming the order dated 29.12.1986 are also hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.